THE LEGITIMIZATION STRATEGY OF THE TALIBAN'S CODE OF CONDUCT

The Legitimization Strategy of the Taliban's Code of Conduct

Through the One-Way Mirror

Yoshinobu Nagamine

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Softcover reprint of the hardcover 1st edition 2015 978-1-137-53716-4

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First published in 2015 by

PALGRAVE MACMILLAN®

in the United States—a division of St. Martin's Press LLC,
175 Fifth Avenue, New York, NY 10010.

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ISBN 978-1-349-57626-5 ISBN 978-1-137-53088-2 (eBook)

DOI 10.1007/978-1-137-53088-2

Library of Congress Cataloging-in-Publication Data

Nagamine, Yoshinobu, author.

The legitimization strategy of the Taliban's code of conduct : through the
one-way mirror / Yoshinobu Nagamine.

pages cm

Includes bibliographical references and index.

1. Afghan War, 2001—Law and legislation. 2. Taliban. 3. War (Islamic law)—
Afghanistan. 4. Humanitarian law. I. Title.

KZ6795.T47N34 2015

343.581'014—dc23

2015013124

A catalogue record of the book is available from the British Library.

Design by Newgen Knowledge Works (P) Ltd., Chennai, India.

First edition: October 2015

10 9 8 7 6 5 4 3 2 1

For the people of Afghanistan.

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Preface

The cascade of events inevitably forces practitioners to keep abreast with the latest developments at the cost of not reflecting enough on past lessons. As a humanitarian worker, I myself belonged to this specie of practitioners focusing from one crisis to the other. The work in Afghanistan brought me to the heart of insurgency, which challenged me with questions about the origin and the motives of the Taliban. What lessons can be drawn from the current dealing with the Taliban and what are the leverages to influence the Taliban? I then came across the Laycha, the Code of Conduct issued by the Taliban, and wondered what impact such a Code exerted on the actual conduct of hostilities. The idea captivated me that the analysis of the Taliban's value system based on the Code of Conduct might lead to a serendipitous insight as to how to influence the Taliban in favor of protection of civilians.

The thrust of the research is the following. The sudden ascent of the Taliban to power in the early 1990s is often ascribed to the military strategy and the material assistance from neighboring countries but less to the popular acclaim the Taliban enjoyed at the outset. It is the latter that the research intends to dwell on. The research first argues that the Taliban could not have thrived without the particular circumstance in which the movement found fertile soil. It considers the Taliban as "an indigenous, situational and reactional phenomenon" of the Afghan society as adequately coined by a professor of Peshawar University and less as an external entity concocted in the radicalized madrassas of the refugee camps in Pakistan. A Taliban spokesman once likened Afghanistan to a mirror image of the world: "If you do not like your image in the mirror, don't break the mirror but break your face." Similarly, the Afghan society is reflected in the Taliban movement, which cannot be dissociated from the former.

The decade-long Soviet occupation and the armed resistance left a destructive impact on life and property of the population just to be followed by another devastating period of internecine fighting among warlords. Accordingly, the understanding as to what constitutes an ideal leader also changed with the course of events. After a long period of hereditary successions of royal authority, political legitimacy came to be bestowed on those who vowed to defend religious values and resist Soviet occupation. After the Soviet withdrawal, anybody who managed to disarm the marauding warlords

and to ensure security was hailed as a redeemer. Not surprisingly, the manifesto of the Taliban to restore law and order based on a strict interpretation of Sharia law resonated with many Afghans. The “peace in the graveyard” under the Taliban regime was still to be preferred to the previous period of chaos and lawlessness.

After the ousting of the Taliban from Afghanistan in 2001, the introduction of presidential democracy based on popular vote and recognition of Afghanistan as a full-fledged member of the international community represented a challenge to the previous way how legitimacy was defined and acquired. The Taliban pilloried the weakness of the Karzai government and started an insurgency against the coalition forces. They evoked Jihad and let revive the old label of Mujahideen (freedom fighter) with the hope of gaining the same level of legitimacy the members used to be bestowed. The difference today, however, is that armed struggle no longer coincides with what is considered legitimate by the so-called community of liberal states. Today, recognition is granted to those who effectively protects their own population from physical threat, provide social service, and elevates their general standard of living.

Against this backdrop, the Taliban is obdurately sandwiched between the old way of acquiring legitimacy through armed struggle and the new reality of legitimacy associated with responsible government. In the course of interaction with its own fighters and international community, the Taliban is undergoing an identity split; to its own members, the Taliban articulates the old rhetoric of Jihad against the invading non-believers, whereas to the external community it alludes to complying with international and humanitarian norms. Nothing exemplifies better than the Taliban’s Code of Conduct, which I attempt to illustrate with a model termed the “one-way mirror.” It is open to interpretation whether the Taliban’s response is an outcome of bedeviled soul-searching or of a cool-minded calculated strategy. What can be at least inferred is that the double-pronged rhetoric is used consistently throughout Afghanistan and that this insight leads to new hints and reflection on how to deal with the current insurgency in Afghanistan.

More than a decade has passed since the Taliban insurgency in Afghanistan made its appearance and since the Coalition Forces became entangled in a long and protracted war. Now, the international forces begin to withdraw from Afghanistan and the world attention is on the armed conflicts in Syria and Iraq. Again, Afghanistan is on the verge of falling into oblivion reminiscent of the times when the Soviet forces withdrew and when the world was transfixed by the wars in Yugoslavia, Rwanda, and Somalia. On the other hand, the withdrawal from Afghanistan may also represent an opportunity, as the international community has become more susceptible to alternative solutions other than kinetic ones. In search for a less costly and sustainable solution in Afghanistan, a thorough reality check and analysis of the political dynamics, the insurgency, and the coalition’s response are primordial—and this book hopes to make a modest contribution in this regard.

The reader may forgive me for the academic tone of the book as it was conducted in the framework of PhD dissertation at the University of Tokyo. In order to make the book readable to a wide audience, utmost care was paid to omit academic jargon and keep theory to the minimum. The opinions stated in the following research are those of the researcher alone and do not reflect the views of any of his organizations. All interviews used herein were conducted in the private capacity of the author.

Last but not least, I cannot hide my surreptitious wish that this book is read, commented, and reflected upon by the Taliban members themselves. After all, a sustainable solution in Afghanistan can only be found with the inclusion of all stakeholders, including, whether we like it or not, the Afghan Taliban.

Tokyo
November 2014

Acknowledgments

I am highly indebted to a considerable number of persons without whose help the current research could not have been conducted. I would first like to thank researchers and practitioners based or living in Afghanistan, in particular Abdul Rahman, Danish, Farida, Fazel, Gulmar, Heather, Ishaq, Karimi, Kate, Muzafary, Nader, Noorzai, Rafiq, Roohafza, Sabrina, Sarah, Subel, Shinichi, Takuro, Thomas, Waheed, and Zubair, the full names of whom I prefer not to mention. Persons based in Pakistan were also helpful in the research, such as Abdul Rauf, Babr, Imdad, Imtiaz, Maulana, Nasreen, Rana, Sarfraz, Salma, Sami, Sayed, Syed, and Zia.

I also would like to thank the various experts who helped me to develop and contextualize my research, in particular Alexander Neill, Antonio Giustozzi, Ahmed Rashid, Michel Semple, Jonathan Goodhand, Christopher Langton, and Thomas Ruttig. As for resource persons in Japan, I appreciate the assistance of Akira Naito, Masato Toriya, Miyata Osamu, Rashid Khaled, So Yamane, and the Afghan students Farasoo and Ahmadzai. Special thanks go to Asahi, BBC, Deutsche Welle, Kyodo, NHK, and Pajhwok media bureau for their cooperation. As for logistics and technical support, I would like to thank Frank, Jason, Marco, Mashhood, Roohafza, Shah Jehan, and Yoshimi. The research trips would not have been possible without the generous funding from the Research Institute of Peace and Security and the Global Studies Programme of Tokyo University. The International Peace Cooperation Bureau of the Cabinet Office also generously offered its infrastructure during my last year of research.

I would like to thank, in particular, Professors Yasunobu Sato, Akira Kotera, Atsushi Okuda, Jun Ishida, Mitsugi Endo, Yoshinobu Yamamoto, and Yumi Nishimura for their invaluable guidance. I am greatly indebted to Professor Muhammad Munir from the International Islamic University of Islamabad who kindly guided me through the complexity of Islamic law, and to Keiichiro Okimoto who kindly reviewed the chapter on humanitarian law. Discussions with colleagues of the Cabinet Office were helpful in refining the research. I would like to express my appreciation for comments and encouragements from Masahara Nishihara and the ambassadors Misako Kaji, Hideki Asahi, (Judge) Hisashi Owada, and Reiichiro Takahashi, as well as for the moral support from Dylan Scudder, Hisashi Tsuya, K. from

Kandahar, Ryo Maeda, Tomoaki Murakami and Sachiyo Yoshida. Special thanks go to my parents, for whom I cannot find words grand enough to show my appreciation for their confidence and love during all these years.

Finally, I cannot hide my shock and deep regret at learning of the passing away of Professor Akira Kotera and feel greatly honored to have received his final guidance. His persistent encouragement to think critically will be fondly remembered.

Abbreviations

AAN	Afghanistan Analysts Network
AGE	anti-government element
AIP	Afghan Independent Press
ALP	Afghan Local Police
ANA	Afghan National Army
ANP	Afghan National Police
ANSA	armed non-state actor
ANSO	Afghanistan Non-governmental Security Office
API	1977 First Additional Protocol to the 1949 Geneva Conventions
APII	1977 Second Additional Protocol to the 1949 Geneva Conventions
APRP	Afghanistan Peace and Reintegration Program
ATT	Afghan Transit Trade
BKTEF	Baacha Khan Trust Educational Foundation
CMC	Conflict Monitor Center
CPOST	Chicago Project on Security and Terrorism
DCAF	Geneva Centre for the Democratic Control of Armed Forces
DPH	Direct Participation in Hostilities
GC	1949 Four Geneva Conventions
HRW	Human Rights Watch
ICC	International Criminal Court
ICJ	International Court of Justice
ICRC	International Committee of the Red Cross
ICTY	International Criminal Tribunal for the former Yugoslavia
IEA	Islamic Emirate of Afghanistan (Taliban's own appellation for Islamic Republic of Afghanistan)
IED	improvised explosive device
IHL	International Humanitarian Law
IHR	International Human Rights Law
IIHL	International Institute of Humanitarian Law
INGO	international non-governmental organization
IRA	Irish Republican Army
IRIN	Integrated Regional Information Networks
ISAF	International Security Assistance Force

ISI	Inter-Services Intelligence of Pakistan
JETRO	Japan External Trade Organization
JICA	Japan International Cooperation Agency
KLA	Kosovo Liberation Army
KP	Khyber Pakhtunkhwa (Province of Pakistan)
LTTE	Liberation Tigers of Tamil Ealam
NGO	non-governmental organization
NHK	Nippon Hoso Kyokai (Japan Broadcasting Corporation)
NSA	non-state actor
NSAG	non-state armed group (same as ANSA)
NWFP	North-West Frontier Province of Pakistan, since 2010 Khyber Pakhtunkhwa
OCHA	UN Office for the Coordination of Humanitarian Affairs
POW	prisoner of war
PRT	Provincial Reconstruction Team
PTS	Program for Strengthening Peace (in Dari)
RUSI	Royal United Services Institute
TTP	Tehrik-i-Taliban Pakistan (Pakistani Taliban)
UAE	United Arab Emirates
UNAMA	UN Assistance Mission to Afghanistan
UNDSS	UN Department of Safety and Security
UNHCHR	UN High Commissioner for Human Rights
UNODC	UN Office on Drugs and Crime
USAID	US Agency for International Development
USIP	US Institute of Peace

Glossary

<i>al Samood</i>	name of Taliban's Arabic language magazine
<i>alim</i>	Islamic scholar (Arabic, Dari, Pashto)
<i>amir</i>	leader, king (Arabic)
<i>amir ul-Momineen</i>	Commander of the Faithful (Arabic)
<i>amr bi-l-ma'rufwa nahw al-munkir</i>	General Department for the Preservation of Virtue and the Elimination of Vice (Arabic)
<i>andival</i>	comradesi na rms(Pashto)
<i>ansar</i>	helpers, alluding to those who accommodated the refugees from Makka to Medina during the time of the Prophet (Arabic)
<i>aql</i>	intellect (Arabic, Pashto)
<i>asaasi qanoon</i>	constitution (Dari)
<i>asif</i>	servant (Arabic)
<i>bacha bazi</i>	literally boy play, where boys are prostituted in an auc- tion to the highest bidder (Dari)
<i>badal</i>	revenge (Pashto, Dari)
<i>baghy</i>	(doctrine of) rebellion (Arabic)
<i>beit ul-mal</i>	public property under Islamic law (Arabic)
<i>da amalyaato</i>	procedure of operations (Pashto)
<i>porosa</i>	
<i>dar al-islam</i>	abode of peace (Arabic)
<i>dar al-harb</i>	abode of war (Arabic)
<i>darūra</i>	principle of necessity (Arabic)
<i>dawah</i>	invitation (Arabic)
<i>Deobandi</i>	Islamic revivalist movement based on strict adherence to Qur'an and Sunnah
<i>din</i>	religion (Arabic)
<i>Durrani</i>	Pashtun tribal confederation in southern and south- eastern Afghanistan and western Pakistan
<i>ezat</i>	honor (Pashto)
<i>fard</i>	religious obligation (Arabic, Dari, Pashto)
<i>fedayeen</i>	redeemers, "those who sacrifice," voluntary militant group (Arabic, Farsi, pl.)

<i>fei</i>	public property under Islamic law (Arabic)
<i>ghairat</i>	bravery (Pashto, Dari)
<i>ghair ahl-i qitāl</i>	non-combatant (Arabic)
<i>Ghilzai</i>	second largest Pashtun tribal confederation in eastern Afghanistan
<i>hadith</i>	recorded sayings, rulings, and teachings of the Prophet (Arabic)
<i>haiat</i>	commissioner, envoy (Pashto, Dari)
<i>haraba</i>	highway robbery (Arabic)
<i>barakat</i>	movement (Arabic)
<i>hijrah</i>	migration, alluding to the Prophet's flight from Makka to Medina (Arabic)
<i>huddud</i>	crimes prescribed by the Qur'an and the Hadith the prosecution of which is mandatory (Arabic)
<i>ijma</i>	consensus of jurists and scholars of the Muslim world (Arabic)
<i>ijtihad</i>	effort of jurists to arrive at correct judgments in Islamic law (Arabic)
<i>ikhtilaf</i>	legitimate disagreement (Arabic)
<i>jahadah</i>	struggle, striving (Arabic)
<i>Jihad</i>	striving, endeavoring, and struggling by means of speech, action, life, property, and other than these in the path of God (Arabic)
<i>Jihad al-akbar</i>	Greater Inner Jihad, spiritual struggle against the inner lower self (Arabic)
<i>Jihad al asghar</i>	Smaller Outer Jihad, physical struggle against the enemy of Islam (Arabic)
<i>Jihad bil saif</i>	Jihad by the sword (Arabic)
<i>jinayat</i>	offenses of bodily injuries and homicide susceptible of retributive punishment (Arabic, pl.)
<i>jirga</i>	assembly (Pashto)
<i>khan</i>	usually a title for a ruler in Turkic and Mongolian languages, but for Persians and Afghans/Pashtuns it is understood as chief and nobleman
<i>khums</i>	tax based on one-fifth of the war booty (Arabic)
<i>khuruj</i>	withdrawal from the Muslim community (Arabic)
<i>kufr</i>	infidel (Arabic)
<i>layeha</i>	rule, guideline, law (Pashto, in Arabic: layha [laiħa])
<i>madrassa</i>	any type of educational institution, whether secular or religious (Arabic)
<i>maharaba</i>	aggression, offensive violence (Arabic)
<i>mahaz</i>	front(Pashto,D ari)
<i>mal</i>	wealth or property (Arabic)
<i>mujahid</i>	a person who engages in Jihad (Arabic, same as <i>mujahed</i>)
<i>mujahideen</i>	same as above (Arabic, same as <i>mujahedin</i> , or <i>mujahidin</i> , pl.)

<i>mujtahid</i>	a person who engages in intellectual <i>ijtihad</i>
<i>mullah</i>	religious leader or teacher, preacher (Arabic)
<i>musawat</i>	equality (Arabic, Pashto, Dari)
<i>nafs</i>	life (Arabic)
<i>nanawati</i>	asking for forgiveness, pardon (Pashto)
<i>nang</i>	chivalry (Pashto, Dari)
<i>nashk</i>	abrogation, repudiation (Arabic)
<i>nasl</i>	progeny or lineage (Arabic)
<i>nayeb</i>	deputy
<i>pashtunwali</i>	indigenous customary code of behavior (Pashto)
<i>poar</i>	loan, compensation (Pashto)
<i>qadhaf</i>	slander (Arabic)
<i>qanoon</i>	law (Dari, Pashto)
<i>qital</i>	fighting (Arabic)
<i>qiyas</i>	deductive analogy in which the teachings of the <i>hadith</i> are compared with the Qur'an (Arabic)
<i>sariqa</i>	theft (Arabic)
<i>shabnameh</i>	night letter (Persian)
<i>sharia</i>	Islamic law (Arabic), Muslim universe of ideals, a result of collective efforts to understand and apply the Qur'an and the Sunnah
<i>shawka</i>	demonstrated power to challenge the state (Arabic)
<i>shorb al-khamar</i>	drinking alcohol (Arabic)
<i>shura</i>	council (Arabic)
<i>siyar</i>	Islamic law of nations, law of combat
<i>spingiri</i>	white-bearded elder (Pashto)
<i>sunnah</i>	good deeds, habits, customs, and practice of the Prophet (Arabic, pl.)
<i>talib</i>	literally student (Arabic, Pashto) commonly designating the Islamic fundamentalist political movement in Afghanistan, which started in 1994
<i>taliban</i>	students (Arabic, Pashto, pl., talib plus Persian plural ending of -an)
<i>tanzil</i>	"to send down" designating the act of descent of the preexisting Qur'an through different realms (Arabic)
<i>tawba</i>	repentance (Arabic)
<i>ta'wil</i>	reasonable religious pretext for disobedience (Arabic, Pashto, Dari)
<i>ta'zir</i>	offences not mentioned in the primary sources of Islamic law where the judge has discretionary authority in stating the type of punishment (Arabic, Pashto, Dari)
<i>ulema</i>	Islamic scholars (Arabic, pl.) or <i>'alim</i> (sing.)
<i>ummah</i>	global community of believers (Arabic)
<i>ushr</i>	religious tax in Muslim countries, payable in cash or in kind. Usually levied 10 percent on people engaged in

	agriculture, livestock-raising, fishing, or crafts (Arabic, Pashto)
<i>usool</i>	rules (Arabic, Pashto, Dari)
<i>uzr</i>	asking for forgiveness among communities (Pashto)
<i>zakat</i>	religious tax on assets and liquidity (Arabic)
<i>zamin</i>	land (Dari)
<i>zan</i>	women (Dari)
<i>zar</i>	gold (Dari)
<i>zina</i>	adultery/fornication (Arabic)